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VIA ELECTRONIC MAIL

Representative James Comer
Chairperson
Committee on Oversight and Accountability
U.S. House of Representatives
2410 Rayburn HOB
Washington, D.C. 20515

Re: Your February 8, 2023 Request for Documents from Robert Hunter Biden

Dear Chairperson Comer:

Last night at 8:07 PM, I received your letter directed to my client, Robert Hunter Biden (the “Letter”), requesting certain records and communications. While the Letter professes to be a proper and lawful exercise of the Committee’s oversight power, your words actually undercut that propriety. For example, your Letter states that you are investigating “President Biden’s connections” to certain conduct and transactions, yet in the same breadth your Letter presupposes near-certain conclusions that my client “peddled influence to generate millions of dollars for the Biden family,” that he “engaged in foreign business deals with individuals who were connected to the Chinese Communist Party,” and that he “received significant amounts of money from foreign companies without providing any known legitimate services.” (Letter at 1). Peddling your own inaccurate and baseless conclusions under the guise of a real investigation, turns the Committee into “Wonderland” and you into the Queen of Hearts shouting, “sentence first, verdict afterwards.”

As your Letter is a sweeping attempt to collect an expansive array of documents and communications from President Biden and his family, I write to explain that the Committee on Oversight and Accountability lacks a legitimate legislative purpose and oversight basis for requesting such records from Mr. Biden, who is a private citizen.

While Congress is afforded broad oversight responsibilities under the Constitution and as implemented by House Rule X, these responsibilities and the authority that comes with them have limits. Principally, legislative inquiries, “must be related to, and in furtherance of, a legitimate task of the Congress.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). In other words, courts require that Congress has a proper legislative purpose to investigate. “Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Id.* Congress has the power to conduct investigations only as related to constitutionally enumerated legislative powers; it is *not* granted absolute and unconstrained

investigative power. *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1881). Congress cannot act as a prosecutor and is not accorded “law enforcement” powers, which are “assigned under our constitution to the Executive and the Judiciary.” See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2032 (2020) (citing *Quinn v. United States*, 349 U.S. 155, 161 (1955)). Congress is without authority to “try” someone “‘before [a] committee for any crime or wrongdoing’” *Id.* (citing *McGrain v. Daugherty*, 273 U.S. 135, 179 (1927)).

Your Letter explains that the Committee “will examine drafting legislation to strengthen federal ethics laws regarding public officials and their families.” (Letter at 1). This attempt to invent a legislative purpose is thinly veiled, at best. Making such a statement, when all other aspects of your effort undercut that purpose, will not satisfy the required basis to proceed. It is more than ironic, perhaps hypocritical, for Republican members who now hold the gavel to declare such a legitimate purpose, when, while in the minority, they were vocal opponents of House Democrats seeking similar information from President Trump and his family, some of whom held official government positions.

In a letter to the late former House Oversight Chairman Elijah Cummings, when the Democrats held the majority, your colleague, and then Ranking Member Jim Jordan (who sat next to you at your February 8th hearing) stated that a subpoena of President Trump and his family’s personal records was “an unprecedented abuse of the Committee’s subpoena authority[.]”¹ Mr. Jordan described the subpoena for financial and business records as an “irresponsible and gravely dangerous course of conduct in a singular obsession of attacking President Trump and his family for political gain.”² Mr. Jordan feared that Chairman Cummings would selectively release information gained from the subpoena “in a misleading fashion to create a false narrative for partisan political gain.”³ If your Republican colleagues were sincere in their assertions *then*, they would ask you *now* to reconsider your request.

While your Letter attempts to demonstrate “legislative purpose” for investigating Mr. Biden, it fails nevertheless to address that the Committee’s scope of oversight is limited when dealing with private persons like our client. In limiting Congress’ investigative power, the Supreme Court has explained that Congress cannot engage in a practice of “exposure for the sake of exposure” especially as related to “*the private affairs of individuals* without justification in terms of the functions of the Congress.” *Watkins*, 354 U.S. at 187 (emphasis added). In his outcry against the Mazars subpoena, Representative Jordan, citing *Watkins*, even emphasized that private persons have a limited place in Committee investigations: “[t]he Supreme Court has cautioned that Congress does not have ‘general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.’”⁴

¹ Letter from Ranking Member of the H. Comm. on Oversight and Reform Jim Jordan to Chairman Elijah Cummings (Apr. 15, 2019), <https://oversight.house.gov/wp-content/uploads/2019/04/2019-04-15-JDJ-to-EEC-re-Mazars-Subpoena.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

The past sentiments of the current Chairperson of the House Judiciary Committee regarding the Mazars accounting firm subpoena apply even more strongly now to your similar requests seeking information about President Biden's family. Whether you think Mr. Biden acted properly or not, and whether you think his private business dealings and associations are inappropriate or not, his behavior is that of a private citizen, *not a public official*. There was and is no family business in which he ever worked. He did not become a member of his father's Administration. He does not maintain holdings that could be affected by the Administration's actions. He was and is not in a position to use any of his positions in any family company or the Administration to now seek new business opportunities. That his father was a Senator, Vice President, or now President is not an endorsement of your choice to make every aspect of Mr. Biden's personal life your political weapon.

In fact, that Mr. Biden is the son of the President implicates serious separation of powers concerns even further limiting your investigative scope. Congressional investigations are particularly limited when inquiries implicate a sitting president *or* his family members. The Framers feared that a Congress without limits would use its subpoena power to "exert an imperious controul [sic] over the Executive Branch and aggrandize itself at the President's expense[.]" (internal citations omitted). *Mazars*, 140 S. Ct. at 2034. In *Mazars* the Supreme Court explained that when an inquiry relates to a president, Congress must "adequately identif[y] its aims and explain[] why the President's information will advance its consideration of the possible legislation." *Id.* at 2036 (citing *Watkins*). This is especially true where documents are "of intense political interest for all involved." *Id.* at 2022.

Regarding your current request for expansive and invasive personal information about the President and his family, the Supreme Court has warned that such requests could unduly "harass the President" or otherwise "render him complaisant[.]" To prevent this, the Court set out "[s]everal special considerations" that would inform the analysis. *Id.* at 2034-35. Various Justices emphasized the higher scrutiny that comes with requests such as the one you have made. *See id.* at 2037-47 (Thomas, J., dissenting) (stating that Congress, even if it could state it was acting as part of its legislative function, lacked the authority to compel documents from private parties); *id.* at 2048 (Alito, J., dissenting) ("Whenever such a subpoena comes before a court, Congress should be required to make more than a perfunctory showing that it is seeking the documents for a legitimate legislative purpose and not for the purpose of exposing supposed Presidential wrongdoing. The House can inquire about possible Presidential wrongdoing pursuant to its impeachment power, but the Committees do not defend these subpoenas as ancillary to that power.") (internal citations omitted). Nevertheless, your Letter proceeds to inappropriately request substantial documents and communications shared between Mr. Biden and the President.

To the extent that your sprawling search into Mr. Biden purports or suggests any unspecified crimes as related to "national security concerns" or "money laundering activity" (Letter at 1), I remind you that this rationalization would fly in the face of one of the most important restrictions on Congress, not to act for the purposes of "law enforcement." *Mazars*, 140 S. Ct. at 2032. In numerous press conferences, you yourself have advocated for investigations into far-

flung falsities related to purported criminal conduct by Mr. Biden and his family. For example, in a recent GOP press conference outlining the investigation into my client and the Biden family, you stated, “[t]he Biden family’s business dealings implicate a wide range of criminality from human trafficking to potential violations of the constitution.”⁵ During the same conference, you further shamelessly maligned my client by claiming that “Hunter Biden was conducting business with suspected human traffickers. The money gained through influence peddling [] was funneled to a suspected criminal enterprise.”⁶ Investigating these non-existent and far-fetched criminal conspiracies is to prosecute my client, an activity reserved for the executive branch and for the courts.

Your request for documents from Mr. Biden seeks information that is precisely what is prohibited by the Supreme Court. Mr. Biden is a private person for whom Congress faces especially restricted investigative power. *See Kilbourn*, 103 U.S. at 195 (where the inquiry can result in “no valid legislation,” then the “[p]rivate affairs of individuals” are not valid targets for inquiry). He is also the son of the sitting president. As your inquiry directly involves the President and his family, congressional investigative powers are at their most limited. *See Mazars*, 140 S. Ct. at 2035 (finding that a request related to a sitting president involves separation of powers concerns posing a “heightened risk” that documents collected will be used for “impermissible purposes”).

Rather than engage in back-and-forth letter writing campaigns or any formal proceedings, I would offer to sit with you and your staff, including the ranking member and his staff, to see whether Mr. Biden has information that may inform some legitimate legislative purpose and be helpful to the Committee. I hope that you will engage in this effort.

Sincerely,



Abbe David Lowell

Counsel for Robert Hunter Biden

cc: Hon. Jamie B. Raskin, Ranking Member, House Committee on Oversight and Accountability

⁵ Statement of Rep. James Comer, House Republican News Conference on Biden Family Investigation, C-SPAN (Nov. 17, 2022), <https://www.c-span.org/video/?524331-1/house-gop-plans-investigation-president-biden-familys-business-dealings> (last accessed Feb. 9, 2023).

⁶ *Id.*